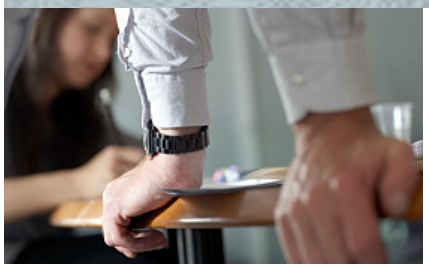
International Arbitration



IN THIS ISSUE

NEXT EDITION
The next edition of Migalhas on International Arbitration will be published in the fall of 2010.

INTERNATIONAL ARBITRATION EXPRESS
Follow the breaking news and developments in the Migalhas International newsletter.

Edited by Mauricio Gomm-Santos and Quinn Smith

Migalhas on International Arbitration

In this fifth issue of Migalhas on International Arbitration, we feature articles from another nation new to our column, a different look at enforcing arbitral awards in Belarus, and an interesting article devoted to analyzing the role of Miami, Florida, as a seat of international arbitrations.

First, Dr Maciej Zachariasiewicz from the law firm Popiołek, Adwokaci i Doradcy in Katowice, Poland, looks at the role of public policy in enforcing arbitral awards in Poland. The article looks at issue with little case law in Poland and gives readers a thought provoking way to analyze the issue.

Next, Alexey Anischenko and Maria Yurieva from the Minsk office of the reputable firm SORAINEN turn our attention to Belarus again, giving readers a statistical overview of enforcing award in Belarus with practical tips for implementation.

Finally, Andrew Riccio from the University of Miami looks at Miami, Florida, as a seat of international arbitration. With the competition for hosting arbitrations heating up, the article should help those considering Miami as a potential seat.

We continue to encourage our readers to give us suggestions for future articles. It would be especially interesting for any readers who would like to promote a location as a seat of arbitration.

If you are from a location growing as a center for international arbitrations, send us an email and let us know. We look forward to hearing from you soon.

About the editors

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International Arbitration

News and Developments in International Arbitration

Public policy as a ground of refusal of recognition or enforcement of the arbitral award in Poland

By Maciej Zachariasiewicz[3]

Public policy (*ordre public*) is a commonly recognized reason for which the recognition or enforcement of an arbitral award may be refused. This exception is expressed in article V(2)(b) of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and it has been incorporated in most (if not all) of the national laws on arbitration in the world. It is also contained in article 1214§3 of the Polish Arbitration Law of 2005 (Part V of the Code of Civil Procedure).[4]

Public policy is a general open-ended concept, which allows courts to refuse the recognition or enforcement for other reasons than those specified in article V(1) and V(2)(a) of the New York Convention. Some even refer to it as an "unruly horse".[5] While this might be a little exaggerated, the key practical difficulty certainly lays in defining the scope of the principles of the state of recognition or enforcement, which fall with the public policy exception. This task gives a wide discretion to the courts, while simultaneously placing an important burden on the judges. Still, it seems that the public policy concept should remain indefinite, precisely because certain degree of flexibility is necessary to deal with special circumstances, in which an arbitral award cannot be accepted, but which are not contemplated by articles V(1) and V (2)(a) of the Convention.

It is generally agreed in the Polish literature[6] and case law[7] that public policy encompasses only the most fundamental principles of the Polish legal system, and as an exception it should be interpreted narrowly. Under the most widely recognized formula: "the public policy is violated, if an arbitral award infringes the public order as such, that is the main principles of the organization of the state or the socio-economic principles prevailing in Poland, defined primary in the Constitution, or the fundamental principles underlying various fields of law."[8] Moreover, Polish courts often repeat that under the public policy exception an arbitral award may not be reviewed as to its substance (*no revision au fond*).[9] Generally, a pro-arbitration attitude is accepted, particularly when it comes to international arbitration, since it is believed that it lays in the interests of the economic cooperation between the states that the arbitral awards are refused recognition or enforcement only in the exceptional circumstances.[10]

The examples of the substantive principles protected under Polish public policy include *pacta sunt servanda*, a contractual autonomy and equality of the parties, and further a general freedom of commercial activity, as well as a compensatory character of liability for damages (which would probably not allow an award on punitive damages to be accepted in Poland). In one of its judgments, the Supreme Court even said that the public policy may be infringed, if a principle of a "social justice" and "social economy" is violated.[11] Under the exception of public policy, Polish court would also protect certain fundamental principles of civil procedure, in particular the requirements of due process. An award violating the parties' basic rights to fair proceedings will thus not be recognized in Poland, either under article V(1)(b) or (d), or under article V(2)(b) of the New York Convention. Otherwise the procedural public policy protects also against awards, which would be rendered in a situation of a partiality of the arbitrators or influenced by corruption.

When looking on the surface, the Polish courts, guided by the literature, faithfully adhere to the pro-arbitration policy embodied in the New York Convention and declare a favorable position towards the recognition and enforcement of the awards rendered in international arbitration. Similarly, also in domestic arbitration the Polish courts tend to declare a careful use of the public policy exception, recognizing its exceptional and narrow character.

International Arbitration

News and Developments in International Arbitration

Nevertheless, a closer look at some judgments shows that the Polish courts have difficulties in applying the concept of the public policy. A problem seems to lay in distinguishing between the simple mandatory rules, the violation of which could normally be appealed before the domestic courts, and the infringement of the fundamental principles of the Polish legal system, being a reason, for which an arbitral award may be refused recognition or enforcement. Polish courts tend to too often treat the simple mandatory rules as the fundamental principles of the Polish legal system. The impression may be derived that Polish courts seem to be guided by a temptation to re-assess the decision made by the arbitrators in contradiction to their own declaration that an award may not be reviewed as to the substance.

What seems to be a Polish peculiarity is that historically – before 2005 – there was only one set of rules relating to the recognition and enforcement of the foreign judgments and arbitral awards. The above mentioned formula used to describe the public policy was first used in the context of the foreign state court judgments, and only later adopted for the purposes of the recognition and enforcement of the arbitral awards. This might have influenced the manner, in which the Polish courts understand the public policy exception. Obviously, the jurisprudence related to the recognition or enforcement of the foreign judgments (whether from before or after 2005) may be taken into account in the area of arbitration. One should however be cautious because any automatic transpositions would be unjustified. The arbitral award is not an act of the authority of a foreign state but an alternative, "private" method of determining the disputes of the parties. Thus, a recognition (or enforcement) of an arbitral award is not quite the same as the recognition of a judgment of a state court. This might be a good reason to look differently at the public policy exception as a ground of the refusal of the recognition or enforcement.[12]

A certain tension seems to exist between the prohibition to review the substance of an arbitral award (*no revision au fond*) and the necessity to examine whether an award does not violate the *ordre public* of the state of recognition or enforcement. The question arises as to how the court may assess the compatibility of an award with the public policy, if it is precluded from looking into the merits of this award. In that respect, it is sometimes suggested that the court's examination under the public policy exception has indeed a nature of a review as to the substance but of a more limited character (in comparison to what is being done under a regular appeal).[13] Others explain that the court is prohibited to control the correctness of the arbitrators' decision, but it has to examine it in order to assess whether the award is compatible with the public policy.[14]

Whichever of these vague guidelines is accurate, the fact seems to be that an important hurdle is to differentiate between the prohibition to go beyond the merits of the case and the permitted scope of review when searching for the violations of the public policy. Judging from certain examples in the Polish case law, this dilemma constitutes a most difficult part of the application of the public policy exception.[15] What is often misunderstood by the Polish courts is that it is necessary to distinguish between the question of what type of infringement could potentially constitute a violation of the public policy and the scope of control of what actually happened in a case at hand. Contrary to what may appear at the first glance, the prohibition to review the award as to the substance refers to the former. Thus, no revision au fond does not mean that a court should not examine the substantive solution reached by the arbitrators, but rather that it cannot refuse recognition (or enforcement), if he finds that there are substantive errors in the award. It may only refuse the recognition, if the fundamental principles of the state of recognition are violated. The latter question – as to the scope of the permissible control, which a judge may exercise in order to assess whether the public policy has been breached in a given case – has not been touched upon in the Polish literature nor could be adequately answered on the basis of the Polish case law.[16] The view I would like to advocate is that a judge should be permitted to re-examine the decision of the arbitrators (or the arbitration proceedings), if there is a *prima faciae* good reason to believe that a fundamental principle of the public policy of the state of recognition or enforcement might have been violated. Such a good reason may come from the strength of the arguments put forward by the party opposing the recognition or enforcement, or eventually from the very holding of an arbitral award, where its wording alone suggests that the public policy might have been infringed. Lacking

International Arbitration

News and Developments in International Arbitration

reasonable motives, a judge should refrain from reassessing the decision of the arbitrators or the arbitration proceedings.

Recognition and Enforcement of Foreign Arbitral Awards in Belarus: A Statistical and Practical Analysis

By Alexey Anischenko and Mariya Yurieva[17]

Belarus, likewise Russia, is often perceived as jurisdiction "unfriendly" to foreign arbitral awards. However available statistics shows the opposite. According to the Supreme Commercial Court of the Republic of Belarus there was no single refusal to recognize or enforce a foreign arbitral award in 2008-2009. At the same time considerable number of application were returned to the applicants due to simple procedural mistakes: failure to submit all documents, required by law and/or lack of proper certification and/or translation of documents, non-payment or improper payment of state fee, etc. Particularly in 2009 there were 27 applications on recognition and enforcement of foreign arbitral awards filed with commercial courts in Belarus and only 17 of them were properly filed.[18] Most of the properly filed applications (14) were claiming recognition and enforcement of the awards rendered by International Commercial Arbitration Court at the Ukrainian Chamber of Commerce and Industry (www.ucci.org.ua). And what may be very surprising to the pessimists – all 17 applications were satisfied. That certainly does not mean that recognition and enforcement of foreign arbitral award in Belarus is a "easy walk" and could be taken as granted. Not long ago statistics was much less positive and there were particular cases when the courts were taken very rigid approach in interpretation of articles II and V of the New York Convention. This articles purposes to help potential applicants providing brief description of existing legal framework and procedure of recognition of foreign arbitral awards in Belarus and identifying main traps that may impede successful enforcement.

Legal Framework

Rules on enforcement of foreign arbitral awards in Belarus are determined at both national and international level. Naturally Belarus is a party to the New York Convention and therefore the latter prevails over national law when applicable.

Under national law foreign arbitral awards arising out of *commercial (economic) disputes and insolvency cases* are recognized and enforced in Belarus in commercial courts according to the procedures set by the Commercial Procedural Code of the Republic of Belarus dated 15 December 1998 (as amended, hereinafter – ComPC).

The ComPC stipulates that recognition and enforcement of a foreign arbitral award could be granted on two grounds, namely if it is provided by an *international treaty* to which Belarus is a party or on the basis of *reciprocity principle*. So far there were no reported cases when the latter principle was actually used in practice in relation to recognition and enforcement of the foreign arbitral award.[19]

Procedure

In accordance with Belarusian procedural rules recognition and enforcement shall be granted upon examination of a written application for recognition filed with the commercial court. Foreign arbitral awards are not to be reviewed *per se* by Belarusian courts provided that all of the procedural requirements have been met. Belarusian courts would accept jurisdiction of the arbitration institution provided that the case is not within the exclusive competence of Belarusian courts under Belarusian legislation or the international treaty to which Belarus is a party. Arbitrability may become an issue in relation to corporate and construction disputes, or when one of the parties to the dispute was declared bankrupt or insolvent. In one of the cases, considered by the Supreme Commercial Court of the Republic of Belarus, the court decided to ignore the arbitration clause contained in the loan agreement between state-owned borrower and foreign private lender due to the fact that by the time the dispute arose bankruptcy proceedings had been initiated by the borrower and the court held that all the disputed involving the bankrupt borrower shall be considered by the court, handling the bankruptcy case.

Applications for recognition and enforcement shall be submitted to a commercial court of first instance at the place

International Arbitration

News and Developments in International Arbitration

where the debtor resides or, if such place is not known, at the place where the debtor's property is located.

The application for recognition and enforcement of a foreign arbitral award shall indicate the name and place of residence of the arbitral tribunal, composition of the panel; names and places of residence of the applicant and the debtor; information about the foreign arbitral award and a precise request for its recognition and enforcement. There are no legal requirements for special allegations (e.g., that the award is not against public morality, etc.) to be included in the application.

The application for recognition and enforcement of a foreign arbitral award shall be accompanied with the following:

- certified[20] original or copy of the foreign arbitral award;
- original arbitration agreement (or its properly certified copy);
- certified translation of the documents listed above into Belarusian or Russian language and
- documentary proof of payment of state fee (that currently amounts to approximately EUR 92).

In case the application is submitted by a foreign company, an extract from trade register and/or official document confirming its legal status and capacity should also be submitted.

The commercial court must consider the application and render its ruling no later than within one month from the date of filing the application, regardless of whether it is opposed or unopposed. The application is considered in an open court hearing with both parties being notified. If a party fails to appear in a court hearing that will not prevent the court from considering the application and rendering its ruling. In addition, Belarusian legislation does not permit to refuse recognition or enforcement on the merits. The ComPC essentially follows article V of the New York Convention.

The ruling of commercial court of the first instance on recognition and enforcement of a foreign arbitral award (whether positive or negative) enters into force immediately upon being declared but can be appealed to the cassation and/or supervisory instances of the Supreme Commercial Court of the Republic of Belarus.

If recognition and enforcement were finally granted, the applicant receives an enforcement court order that will have the same legal effect and will be executed under the same execution procedure as enforcement court orders issued following domestic judgments.

Potential Pitfalls

There are number of local specifics that may impact successful enforcement and thus shall be taken into account by foreign parties when having a dispute that may end up in the need of recognition and enforcement in Belarus. Below are few of them that proved to be most relevant and practically important.

First of all, one should know that by now only final arbitral awards are recognised and enforced in Belarus. Second of all, according to the ComPC only the party to original proceedings can file application for recognition and enforcement. Therefore if there is a cession the assignee might need a separate ruling from the tribunal that rendered the award to confirm procedural substitution. It is even more important to know when there is an arbitration agreement in place, that Belarusian law does not recognise cession of arbitration agreement in principle. Therefore if the arbitral award was rendered in a dispute between the parties different from the parties to the original arbitration agreement and the subsequent cession was not accompanied by a new arbitration agreement than there is a high risk that Belarusian commercial court will refuse recognition and enforcement as contradicting to public order.

Finally, in each particular case, especially those involving state and state companies, the issues of exclusive jurisdiction, state immunity and arbitrability shall be carefully analysed. There were several cases when commercial courts used those concepts to deny recognition and enforcement. For example, in 2005 the Supreme Commercial Court refused recognition and enforcement of several arbitral awards against a state-owned company on the ground that it may be contrary to the interests of the state and other creditors in pending insolvency proceedings and therefore it would be against public policy.

International Arbitration

News and Developments in International Arbitration

Arbitration in the Magic City: Is Miami a Suitable Place to Conduct International Commercial Arbitration between Latin American Parties?

By L Andrew S. Riccio[21]

This article will briefly analyze whether Miami is a suitable place for international commercial arbitration between Latin American parties. The confluence of accessibility and opening markets has led to the increase in business transacted abroad by Latin American businesses. Therefore, "the political and psychological elements which come into play in commercial disputes between parties from countries with different systems demand that, when entering into an arbitration agreement, the parties to a particular dispute take advantage of their freedom to contract in a way which will satisfy their specific needs."[22] Arbitration has long been favored over local courts to resolve international commercial disputes. Professor van den Berg stated that, "The foreign court can be an alien environment for a businessman because of his unfamiliarity with the procedure which may be followed, the laws to be applied, and even the mentality of foreign judges."[23]

As a form of dispute resolution, international arbitration is generally supported in the United States and Miami in particular. The Federal Arbitration Act ("FAA"),[24] for example, codifies the federal arbitration laws of the U.S. The first of the three chapters is concerned with arbitrability and the general aspects of domestic arbitration. Chapter Two incorporates the New York Convention and Chapter Three the Panama Convention. The inclusion of both conventions is remarkable in that it signals a dedication to protecting the sanctity of international arbitration by providing protection to parties seeking to enforce an award or compel arbitration. Furthermore, "[b]ecause of its extensive commercial and cultural ties to Latin America, the State of Florida has enacted targeted legislation and regulations over the courts of the last three decades designed to provide a sound and sophisticated legal framework to promote international arbitration in Florida."[25]

In 2008, the U.S. Supreme Court ruled that the grounds stated in the FAA for vacating or modifying an arbitration award constitute the exclusive grounds.[26] Furthermore, "Congress enacted the FAA to replace judicial indisposition to arbitration with a 'national policy favoring [it] and plac[ing] arbitration agreements on equal footing with all other contracts.'"[27]

However, there are currently two versions of the Arbitration Fairness Act (hereinafter "the proposed act") currently being debated in Congress. The purpose of the Act is to amend Chapter One of the FAA to provide judicial protection in situations where parties with unequal bargaining power acceded to an arbitration agreement. The proposed Act "declares that no predispute arbitration agreement shall be valid or enforceable if it requires arbitration of an employment, consumer, or franchise, or civil rights dispute."[28] Although on its face this amendment does not seem to be directly adverse to international arbitration, its unintended effects could be detrimental. Alexandre de Gramont[29] said that the proposed Act would so severely limit arbitration that he equated it to "Congress attempting to limit automobile emissions by voting to outlaw cars."[30] U.S. companies use international arbitration, because they likely do not see foreign courts as impartial. If this Act passes, some issues that the parties had intended to arbitrate will wind up in court, repugnant to the desires of the parties.

Under the FAA, Section 10 of Chapter 1 lists five grounds for vacatur (corruption, impartiality, arbitrator misconduct, arbitrators exceeding their powers, and a previously vacated award).[31] In *Hall Street Associates, LLC v. Mattel, Inc.*, [32] Hall Street argued that, pursuant to a previous Supreme Court decision,[33] an arbitral award could be vacated by a US court based solely on manifest disregard of U.S. law by the arbitrators, despite the fact that this is not included in the Section 10 list. The Supreme Court, however, rejected the arguments, and ruled that manifest disregard is not a separate ground for vacatur and courts that applied it in the past were in error. "The Courts of Appeal have spilt over the exclusiveness of these statutory grounds when parties take the FAA shortcut to confirm, vacate, or modify an award, with some saying the recitations are exclusive, and others regarding them as mere threshold provisions open to expansion by agreement."[34] The Court determined that the list is indeed exclusive, and does not expand to include manifest disregard of the law.[35]

International Arbitration

News and Developments in International Arbitration

Hall Street is beneficial for Latin American parties choosing to arbitrate in Miami because it allows for predictability.[36] Along with neutrality, the conventions, and courts favorable to international arbitration, the uniform application of national law is an important factor to consider when selecting an arbitration site. Because of the potential negative effects on international arbitration, companies should monitor the Arbitration Fairness Act through the course of the legislative process.

In the State of Florida, both state and federal courts have shown positive treatment of international arbitration. "[B]ecause of Miami's position as the commercial gateway to Latin America, [Florida] and federal courts have vast experience in dealing with complex commercial disputes of an international nature. The immense volume of such international legal disputes litigated in Florida has augmented and refined Florida's body of international commercial law."[37]

In a recent case,[38] the court was asked to confirm and enforce an arbitration award. The proceedings were conducted in Miami pursuant to the rules of the AAA, as compelled by a Florida state court applying the Florida International Arbitration Act.[39] Petitioner, a Honduran entity, sought to confirm and enforce the award granted by the Tribunal. The short decision makes use of the Florida International Arbitration Act to determine that Respondent Traffic Sports failed to prove that the Tribunal "conducted its proceedings so unfairly as to substantially prejudice the rights of the party challenging the award."[40] Traffic Sports argued that because the tribunal did not conduct a thorough conflict of laws analysis between Honduran and U.S. law, that it had violated the statute. The Court, however, noted that it "[wa]s not permitted to second guess the Tribunal or inquire into the substantive fairness of the award itself." [41]

"Being the gateway to Latin America, Miami has become the obvious place for companies to come to resolve their disputes."[42] Depending on the nature of the arbitration and the identity of the parties, this statement will hold true. Barring visa issues or the particular needs of arbitrators or witnesses, Miami is an ideal arbitration site for proceedings between Latin American parties.

References

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4 O.J. 1964, No 43, item 296 with the later amendments. Article 1214§3 refers to public policy as a ground of refusal of recognition or enforcement of arbitral award, while under art. 1206§2 of the Code public policy is also a reason for which an award may be set aside.

5 The expression comes from Burrough J. and was made in Richardson v. Mellish (1824) 2 Bing. 229, 252.

6 See e.g. T. Ereciński, K. Weitz, Sąd arbitrażowy (2008), p. 369; M. Pilich, Klauzula porządku publicznego w postępowaniu o uznanie i wykonanie zagranicznego orzeczenia arbitrażowego, Kwartalnik Prawa Prywatnego (2003), No 1, p. 168; R. Morek, Mediacja i arbitraż: Komentarz (2006), p. 266; A. Wiśniewski, Klauzula porządku publicznego jako podstawa uchylenia wyroku sądu arbitrażowego (ze szczególnym uwzględnieniem stosunków krajowego obrotu gospodarczego), ADR: Arbitraż i Mediacja (2009), No 2, p. 121.

7 E.g. Supreme Court, 6 March 2008, I CSK 445/07; Supreme Court, 29 November 2007, III CSK 176/07; Supreme Court, 12 September 2007, I CSK 192/07; Supreme Court, 11 May 2007, I CSK 82/07; Supreme Court, 8 December 2006, V CSK 321/06; Court of Appeals (Katowice), 29 December 2006, I ACa 1589/06; Supreme Court, 28 April 2000, II CKN 267/00; Supreme Court, 16 May 1997, I CKN 205/97.

8 Supreme Court, 11 May 2007, I CSK 82/07; Court of Appeals (Poznan), 16 November 2005, I ACa 912/05; Court of Appeals (Katowice), 25 October 2005, I ACa 1174/05; Court of Appeals (Katowice), 18 October 2004, I ACa 565/04; Supreme Court, 9 March 2004, I CK 412/03; Supreme Court, 26 February 2003, II CK 13/03; Supreme Court, 26 September 2003, IV CK 17/02; Supreme Court, 11 July 2002, IV CKN 1211/00; Court of Appeals (Warszawa), 29 May 2000, I ACa 65/00; Court of Appeals (Gdańsk), 14 July 1995, I Acr 424/95.

9 See e.g. the case law cited in note 5 and 6 above.

10 T. Ereciński, K. Weitz, Sąd…, p. 403.

11 Supreme Court, 28 April 2000, II CKN 267/00.

12 Compare a judgment of the Swiss Tribunal Fédéral of 12 December 1975, 101 I 521.

13 M. Pilich, Klauzula..., p. 179.

14 A. Wiśniewski, Klauzula..., p. 130.

15 In a judgment of 29 December 2006 the Katowice Court of Appeal (I ACa 1589/06) declared that it cannot examine certain allegations of violation of public policy because of the no revision au fond principle. Among other arguments, the party opposing the arbitral award put forward that the contract was void because of the crime committed by the other party. Although the judgment might be right in the concrete circumstances, the reasoning of the Court of Appeal causes doubts as to the true motives which guided the judges. Certainly, if the contract was indeed invalid because of the underlying crime, any Polish court would not accept an arbitral award who failed to notice this. Therefore, the alleged infringement could potentially have been subject to examination by the court, because the contract concluded as a result of crime do violate public policy. It may be thought thus, that the true reason why the Court of Appeal has not examined these allegations was that they were deprived of any reasonable persuasiveness.

16 Surprisingly, as noted by Poudret and Besson, it has neither received a sufficient attention in the international literature on arbitration. J.-F. Poudret, S. Besson, Comparative Law of International Arbitration (2007), p. 860 et seq.

17 Alexey Anischenko is a partner and head of dispute resolution practice at Minsk office of SORAINEN and senior lecturer at Belarusian State University. Maria Yurieva is an associate at Minsk office of SORAINEN and lecturer at Belarusian State University.

18 Detailed statistic data is available (in Russian) at http://www.court.by/legal-documents/judicial-practice/b22a608876c9fb32.html

19 However there were few occasions when judgements of German, Estonian and French state courts were successfully recognised in Belarus on the basis of reciprocity principle.

20 The meaning of the word "certified" applied with regard to the documents to be attached to the application for recognition and enforcement depends upon the state in which the award is made. It could be consular legalization; apostille (Belarus is a party to the Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents of 5th October 1961) or simple notarization if that is provided by a respective treaty for mutual legal assistance.

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22 Aleksandar Goldstajn, Choice of International Arbitrators, Arbitral Tribunals and Centres: Legal and Sociological Aspects, in Essays on International Commercial Arbitration 27, 31 (Petar Sarcevic ed., 1989).

23 Albert Jan van den Berg, The New York Arbitration Convention of 1958: Towards a Uniform Judicial Interpretation 1 (Kluwer Law and Taxation Publishers, 1981).

24 Federal Arbitration Act, 9 U.S.C. §§ 1-307 (1925).

25 Miami International Arbitration Society, Miami: An International Arbitration Center for the Americas and Beyond 3 (Miami International Arbitration Society 2009). (Hereinafter "MIAS Brochure"). Additionally, Florida is considering adopting the UNCITRAL Model Law on International Arbitration to replace the Florida International Arbitration Act, Florida's attempt to make itself a desirable venue for international commercial arbitrations.

26 See Hall Street Associates, LLC v. Mattel, Inc., 552 U.S. 576, 128 S.Ct. 1396 (2008).

27 Hall Street Assocs., LLC v. Mattel, Inc., 552 U.S. at 582, 128 S.Ct. at 1402 (citing Buckeye Check Cashing, Inc. v. Cardegna, 546 U.S. 440, 443 (2006).

28 Congressional Research Service, S. 931: Arbitration Fairness Act of 2009, Library of Congress (2010) http://www.govtrack.us/congress/bill.xpd?bill=s111-931&tab=summary.

29 Attorney at Crowell & Moring LLP. Alexander de Gramont "is a partner in the firm and vice-chair of the International Arbitration Practice. Resident in the firm's Washington, D.C. office, he specializes in both International Arbitration and Litigation." Alexandre de Gramont, International Litigation/Arbitration Lawyer, Crowell & Moring LLP (2010) http://www.crowell.com/Professionals/Alexandre-de-Gramont.

30 Alexandre de Gramont, Panelist at the CPR Institute's 2009 Annual Meeting (January 15-16, 2009).

31 9 U.S.C. § 10(a).

32 See Hall Street Associates, LLC v. Mattel, Inc., 552 U.S. 576, 128 S.Ct. 1396 (2008).

33 Wilko v. Swan, 346 U.S. 427 (1953).

34 Hall Street Assocs. LLC. v. Mattel, Inc., 128 S.Ct. at 1403.

35 "We now hold that §§ 10 and 11 respectively provide the FAA's exclusive grounds for expedited vacatur and modification." Id.

36 Additionally, the Florida Supreme Court has similarly stated that "[a]n award of arbitration may not be reversed on the ground that the arbitrator made an error of law." Schnurmacher Holding, Inc. v. Noriega, 542 So.2d 1327, 1329 (Fla. 1989). Another positive for choosing Miami as an arbitration site because the highest court in the state has made it explicit that it will not vacate an award for grounds outside those statutorily enumerated.

37 MIAS Brochure at 4.

38 Federacion Nacional Autonoma de Honduras v. Traffic Sports USA, Inc., 2008 WL 4056295 (S.D. Fla. 2008).

39 Florida International Arbitration Act, Chapter 684 Florida Statutes Annotated (1986). Please note, Florida has adopted the UNCITRAL Model Law on International Commercial Arbitration as of July 1, 2010. This factor should contribute to advancing Miami's place as a center of arbitration.

40 Fla. Stat. 684.25(1)(c) (1986).

41 Federacion Nacional de Honduras v. Traffic Sports USA, Inc., 2008 WL at 2. Citing Rintin Corp., S.A. v. Domar, Ltd., 476 F.3d 1254 (U.S.C.A. 11th Cir. 2007).

42 Richard Lorenzo, Hogan & Hartson, in Miami Ramps Up Efforts to Be the Seat of International Arbitration, Julie Kay, South Florida Business Journal, Dec. 4, 2009.

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